

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

DAVID MUNGAI NJENGA,

Plaintiff,

v.

WARDEN NWDC, et al.,

Defendants.

CASE NO. C08-5679-RJB

REPORT AND RECOMMENDATION

The undersigned was named as a settlement judge on September 20, 2010 (Dkt. #66).

On September 23, 2010, the parties convened for purposes of conducting the settlement conference. Pursuant to that conference, the parties reached a settlement agreement resolving all issues between the parties and signing a proposed Stipulation and Order of Dismissal with Prejudice, attached hereto as Exhibit A, and submitted herewith for the Court's consideration.

One of the terms of the settlement agreement was a request by the parties that the undersigned submit a Report and Recommendation to the District Court to relieve the plaintiff of any obligation to pay the filing fee of \$350.00. This Report and Recommendation addresses that request.

1 On April 29, 2009, the District Court granted plaintiff's motion to proceed *in forma*  
2 *pauperis* (Dkt. 6). Under the Prison Litigation Reform Act of 1995 (the "PLRA"), the District  
3 Court is required to assess a fee whenever a prisoner is granted leave to proceed *in forma*  
4 *pauperis* in a civil action and prison officials are required to collect and remit the money to the  
5 court. See 28 U.S.C. § 2925(b)(1)-(2). This statute provides for a partial payment installment  
6 plan as the plaintiff has money in his account until the filing fee is paid.  
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8 The requirement that prisoners proceeding *in forma pauperis* pay the filing fee does not  
9 apply to immigration detainees not facing criminal charges. See Agyeman v. INS, 296 F.3<sup>rd</sup> 871,  
10 885-86 (9th Cir. 2002).

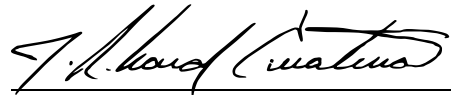
11 The undersigned has been advised by the INS authorities and the Warden at the NW  
12 Detention Center that plaintiff David Mungai Njenga is an immigration detainee and is not  
13 otherwise facing criminal charges. Therefore, there is no requirement under 28 U.S.C. §  
14 1915(b)(1)-(2) that he remit the filing fee if this court exercises its discretion to relieve him of  
15 that obligation. The statute states that at the conclusion of the suit or action "judgment may be  
16 rendered for costs. . . ." 28 U.S.C. § 1915(f)(1). This language gives the court the discretion in  
17 this case to include a provision in the judgment relieving the plaintiff of any further obligation to  
18 pay the filing fee.  
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20 IT IS THEREFORE RECOMMENDED that this Court include a provision in the  
21 dismissal of the case with prejudice that plaintiff be relieved of any further obligation to pay the  
22 filing fee under 28 U.S.C. § 1915.  
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24 Because the parties have entered into a settlement agreement requesting the undersigned  
25 to make this Report and Recommendation, the undersigned believes that the parties have waived  
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1 any objections to this recommendation pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P.  
2 72(b) and that the Court is authorized to act immediately upon this Report and Recommendation.

3 Dated this 24<sup>th</sup> day of September, 2010.  
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7 J. Richard Creatura  
8 United States Magistrate Judge  
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